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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th April 2011

No. 3623—li/1(B)-124/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th February 2011 in Industrial Dispute Case No. 14/2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Konark Cylinders and Containers Pvt. Ltd., Bhubaneswar and its Workman Shri Pabitra Mohan Panda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 14 OF 2004

Dated the 7th February 2011

Present:

Shri S. K. Dash,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of .. First Party—Management
M/s. Konark Cylinders and Containers Pvt. Ltd.,
Bhubaneswar.

And

Their Workman .. Second Party—Workman
Shri Pabitra Mohan Panda,
S/o Pitambar Panda,
At/P.O. Pandalam,
Via Kalapathar,
Dist. Cuttack.

Appearances :

For the First Party—Management	..	NONE
For the Second Party—Workman	..	Shri P. M. Panda, himself

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 889—li/1 (B)-124/2003-LE., dated the 24th January 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the action of the management of M/s. Konark Cylinder and Containers Pvt. Ltd., Bhubaneswar is terminating the services of Shri Pabitra Mohan Panda, Inspector with effect from the 19th February 2001 is legal and/or justified ? If not, what relief Shri Panda is entitled to ? "

3. The case of the workman in brief is that he was working as an Inspector at the rate of Rs. 1,715 per month under the management for the period from the 23rd February 1995 to the 18th December 2002 without any gap. The workman along with other co-workers were on strike and submitted their grievances before the management. But suddenly the workman was called for an explanation and thereafter he was transferred to Visakhapatnam to work there instead of his headquarters office at Bhubaneswar. The workman submitted a representation on the 29th February 2001 and prayed to pay advance T.A. and increase of his salary etc., like staff of the Visakhapatnam Bottling Plant. But the management did not respond the prayer of the workman and took different kinds of *mala fide* action against him and lastly his service was terminated with effect from the 19th February 2001 without following the mandatory provisions of the Industrial Disputes Act. So in this background the workman has raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. But the management did not took part in the hearing and was set *ex parte*.

According to the management, the workman was working as a Quality Control Inspector under the management. But he had been deputed to Vizag Bottling Plant H. P. C. L., Malkapuram, Visakhapatnam by the management for duty. But he neither went to Vizag nor sent any information to the management for which the Company had sustained a heavy financial loss. The workman did not listen the advice of the management and challenged not to go Visakhapatnam and did not give any reply inspite of giving several letters. The workman also insisted to his co-workers for not to go Visakhapatnam. The management has not terminated the service of the workman rather he remained unauthorised absence in his duty on his own accord till date and challenged to give his final settlement dues without submitting any notice and he had filed a case in the Labour Office for refusal of employment for which he is not entitled to get any relief as prayed for by the workman.

5. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) "Whether the action of the management of M/s Konark Cylinder and Containers Pvt. Ltd., Bhubaneswar in terminating the services of Shri Pabitra Mohan Panda, Inspector with effect from the 19th February 2001 is legal and/or justified ?
- (ii) If not, what relief Shri Panda is entitled to ?"

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 5. The management has been set *ex parte*.

FINDINGS

7. *Issue Nos. (i) and (ii)* :—Both the issues are taken up together for discussion for convenience.

W. W. 1 files his affidavit evidence in support of his statement of claim. According to him, he was working as Quality Control Inspector with effect from the 23rd February 1995. He was drawing Rs. 1,715 per month as his wages prior to refusal of his employment. He along with his other co-workers demand for enhancement of wages and other benefits to the management for which the management became vindictive and bore grudge on him and subsequently he was asked to report for duty at the H.P.C.L. Bottling Plant at Malkapuram, Vishakhapatnam on transfer with immediate effect. Although the management has no Branch Office at Vishakhapatnam, the workman prayed for release of Rs. 3,000 towards travelling expenses but the management did not respond. He was restrained by the Security Guard in entering into the Company premises and his service was terminated by way of refusal of employment with effect from the 19th February 2001. Perused the documents marked as exhibits on behalf of the workman. Ext. 1 is the xerox copy of E.P.F. slip, Ext. 2 is the xerox copy of E.S.I. identity card, Ext. 3 is the xerox copy of transfer order, Ext. 4 is the xerox copy of his representation, Ext. 4/a is the xerox copy of receipt regarding under certificate of posting and Ext. 5 is the xerox copy of salary slip for the month of August, 2000.

8. According to the workman he has completed 240 days of continuous service under the management preceding to the date of his illegal termination by way of refusal of employment. No charge was framed against the workman and no enquiry was also held against him. The allegation of the management that the workman remained absent voluntarily has not been established in any manner. However the entire evidence of the workman remained unchallenged. It clearly shows that the service of the workman was terminated with effect from the 19th February 2001 without following the mandatory provisions of Section 25-F of the Industrial Disputes Act which is also precondition one. So on careful consideration of all the materials available in the case record I came to the finding that the action of the management in terminating the service of the workman with effect from the 19th February 2001 is neither legal nor justified. So he is entitled for reinstatement in service.

9. Regarding back wages, as per settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further as per settled

principle of law reported in 2004 (Supp.) OLR 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 40,000 as compensation will meet the ends of justice in this case. Both the issues are answered accordingly.

10. Hence Ordered : That the action of the management of M/s. Konark Cylinder and Containers Pvt. Ltd., Bhubaneswar in terminating the services of Shri Pabitra Mohan Panda, Inspector with effect from the 19th February 2001 is illegal and unjustified. The workman Shri Panda is entitled to be reinstated in service with a lump sum amount of Rs. 40,000 (Rupees forty thousand) only as compensation in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the official Gazette, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. DASH
7-2-2011
Presiding Officer
Labour Court
Bhubaneswar.

S. K. DASH
7-2-2011
Presiding Officer
Labour Court
Bhubaneswar.

By order of the Governor
P. K. PANDA
Under-Secretary to Government